IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 19TH MARCH 2007 / 28TH PHALGUNA 1928

SA.No. 398 of 1993()

AS.435/1991 OF DISTRICT COURT, THIRUVANANTHAPURAM.
O.S.NO.88 OF 1988 OF MUNSIFF COURT, THIRUVANANTHAPURAM.

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APPELLANT:RESPONDENT/PLAINTIFF

SELIN, D/O.LAWRENCE PAREIRA, MARY BADANAM
VALIATHOPPU, NEAR AIRPORT, THIRUVANANTHAPURAM.

BY ADV. SRI.B.KRISHNAMANI, V.PREMCHAND

RESPONDENTS:APPELLANT/DEFENDANT

LAWRENCE PEREIRA, S/O.PRAKASAM PEREIRA,
ST.JUDGE COTTAGE, KANNANTHURA, THIRUVANANTHAPURAM.

BY ADV. SRI.R.S.KALKURA, G.S.REGHUNATH
SRI.M.RAMASWAMY

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD ON 19 /3 /2007 THE COURT ON 19/03/2007 DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

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S.A. NO.398 OF 1993

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Dated this the 19th day of March, 2007

JUDGMENT

Plaintiff in O.S.88/1988 on the file of Munsiff Court, Thiruvananthapuram is the appellant. Respondent is the defendant. Plaintiff and respondent are husband and wife. The suit is filed seeking a decree for permanent prohibitory injunction restraining respondent from trespassing into the plaint schedule property. Admittedly the relationship between the parties are strained. Petition was filed by appellant before Family Court for judicial separation. Under Exts.A1 and A2, the title of the plaint schedule property vests with the appellant. According to appellant, respondent left the house and is living away from the appellant since May,1987. The case of the appellant was that respondent is not entitled to reside in her house and therefore he is to be restrained by a permanent prohibitory injunction.

Respondent in the written statement contended that the property was purchased with his funds and he is residing in that house till appellant left the house on 17.11.87. It was contended that respondent is entitled to reside in the house and appellant is not entitled to the decree sought for. Learned Munsiff framed the necessary issues. On the evidence of plaintiff as PW1 and defendant as DW1, Exts.A1 to A4 and B1 to B6 learned Munsiff held that Exts.A1 and A2 establish title of the appellant and case of respondent that the amount for purchase of the plaint schedule property was advanced by him was not proved. Learned Munsiff also found that appellant is in exclusive possession of the building and against her wishes respondent is not entitled to reside therein and therefore granted a decree restraining respondent from trespassing into the plaint schedule property. Respondent challenged the decree and judgment before the District Court, Thiruvananthapuram in A.S.435/1991. Learned District Judge on

reappreciation of evidence confirmed the findings of the learned Munsiff that the title of the plaint schedule property vests with the appellant. Learned District Judge on the evidence found that respondent being her husband is also residing in that building and in a suit for injunction question of possession on the date of the suit is to be considered. Analysing the evidence learned District Judge found that the husband is also residing in that house. Holding that so long as the marital relationship subsists the husband is entitled to reside therein, learned District Judge held that the decree for injunction is only a discretionary relief and the appellant is not entitled to the decree for injunction granted by the learned Munsiff. The decree granted was set aside and the suit was dismissed. It is challenged in the second appeal.

2. The Second Appeal was admitted after formulating the following substantial questions of law.

1) Whether the first Appellate Court was correct in interfering with the decree granted by the trial court after upholding the finding on the question of title.

2) Whether the finding of the first Appellate Court that respondent is entitled to reside in the plaint schedule building is sustainable?

3. Learned counsel appearing for appellant and respondent were heard.

4. The argument of learned counsel appearing for appellant was that though respondent disputed the title the trial court and the first Appellate Court on evidence held that appellant has title to the property under Exts.A1 and A2. It was also argued that courts below also found that appellant has established her possession of the property. It is therefore argued that in such circumstance, first Appellate Court should not have interfered with the decree granted by the trial court. The argument of learned counsel appearing for appellant was that trial court analysed each

item of evidence in the proper perspective and found that the documents relied on by the respondent were subsequent to the institution of the suit and therefore first Appellate Court should not have interfered with the decree.

5. On hearing learned counsel for the appellant and respondent, it is clear that the marital relationship between the husband and wife still subsists. Though a petition for judicial separation was filed before the Family Court by the wife, it was not successful. So long as the marital relationship subsists, the wife is not entitled to contend that husband is not entitled to come and reside with her. On the evidence learned District Judge found that respondent husband is also residing in the plaint schedule building on the date of the filing of the suit. Learned District Judge also found that being a discretionary relief appellant is not entitled to get decree for injunction. On the facts and circumstances of the case, I do not find any

substantial question of law involved in the appeal. So long as the marital relationship subsists, the wife is not entitled to contend that husband is not entitled to reside with her. In such circumstance, I do not find any reason to interfere with the decision of the District Judge holding that appellant is not entitled to the decree for permanent prohibitory injunction sought for.

Appeal is dismissed.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

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JUDGMENT

19th March, 2007